

NEW YORK, NEW YORK

DENVER, COLORADO

RICHARD M. FIRESTONE  
DIRECT LINE: (202) 872-6820  
FACSIMILE: (202) 728-2130

ARNOLD & PORTER

1200 NEW HAMPSHIRE AVENUE, N.W.  
WASHINGTON, D.C. 20036-6885

(202) 872-6700  
CABLE: "ARFOPO"  
FACSIMILE: (202) 872-6720  
TELEX: 89-2733

LOS ANGELES, CALIFORNIA

TOKYO, JAPAN

June 20, 1994

BY HAND DELIVERY EX PARTE OR LATE FILED

Mr. William F. Caton  
Acting Secretary  
Room 222  
1919 M Street  
Federal Communications Commission  
Washington, D.C. 20554

Re: Ex Parte Presentation in  
PP Docket No. 93-253

Dear Mr. Caton:

In accordance with the Commission's ex parte rule, 47 C.F.R. § 1.1206, an original and one copy of this letter are being filed in PP Docket No. 93-253 as notification that on Friday afternoon, June 17, 1994, George Murray and I met with Commissioner James H. Quello and Lauren J. Belvin, Senior Legal Advisor to Commissioner Quello.

Generally, we discussed the need for the Commission to award bidding credits to PCS broadband bidders which have significant ownership (e.g., 10% and higher) and management participation by Designated Entities. The issues we discussed are set forth in greater detail in the attachment to this letter.

Please contact me if you have any questions regarding this matter.

Respectfully submitted,



Richard M. Firestone

Attachment

cc: Commissioner James H. Quello  
Lauren J. Belvin, Esq.

No. of Copies rec'd  
List ABCDE

*O+1*

June 17, 1994

**SUMMARY OF POINTS BY GEORGE E. MURRAY  
ON AWARDING BIDDING CREDITS TO BROADBAND  
PCS BIDDERS THAT HAVE SIGNIFICANT AND MEANINGFUL  
PARTICIPATION BY MINORITIES OR WOMEN  
PP DOCKET NO. 93-253**

- Congress clearly intended that the FCC adopt mechanisms to ensure that Designated Entities would have a meaningful opportunity to participate in the development of new telecommunications services, including PCS.
- To achieve this goal, the Commission should award bidding credits to: (a) bidders controlled by Designated Entities, and (b) bidders that include significant and substantial participation by Designated Entities, with the amount of the credit tied to the extent of the participation.
- It is crucial that the Commission award bidding credits and adopt this two-pronged approach so that Designated Entities have a realistic opportunity to compete for major urban markets and regional markets, and are not relegated to just the smaller or less economically attractive markets.
  - ° To develop a PCS system requires substantial risk capital; historically, Designated Entities, particularly minorities, have not had access to traditional capital sources, much less the type of risk capital in the magnitude required to acquire, build and operate a PCS system.
  - ° Major companies may be willing to joint venture with Designated Entities to provide additional capital resources, but not if those companies are precluded from having a controlling interest in the bidder. A company which has substantial capital at risk typically demands certain controls.
- Bidding credits would only be awarded in cases where a Designated Entity shares control with a non-Designated Entity-controlled bidder if the Designated Entity's participation in the bidder is real and meaningful, meeting clear and objective standards. For example:
  - ° A Designated Entity must contribute its share of the bidder's total equity capital equivalent to the Designated Entity's percentage ownership;
  - ° A Designated Entity must participate in management by: (a) being one of the general partners, if the bidder is a general or limited partnership; or (b) if the bidder

is a corporation, having the right to designate a particular number of seats on the board of directors (and any other governing bodies of the corporation, such as any management or executive committees) which corresponds to the Designated Entity's ownership interest in the bidder.

- There should be a sliding scale of bidding credits that would increase as the ownership interest of the Designated Entity increased.
  - ° For example, if the Designated Entity owned 10% interest in the bidder, a 15% credit would be available to the bidder; if the Designated Entity owned a 15% interest, the bidder would get a 20% to 25% credit.
  - ° The sliding scale approach provides incentives to increase Designated Entities' participation.
- The bidding credits system described above is not intended to supplant credits provided to a Designated Entity bidding alone, but rather to supplement that approach. There should be more than one vehicle to encourage Designated Entity participation if Congress' objective is to be achieved, particularly in a market like broadband PCS. It would be a travesty if FCC requirements for ownership and control or elimination of bidding credits resulted in little or no minority participation in PCS.